

REMARKS

This amendment responds to the office action mailed June 19, 2003. In the office action the Examiner:

- objected to Figure 5A as not complete;
- rejected claims 28-29 under 35 U.S.C. 102(b) as being anticipated by Bernstein et al. (U.S. Patent No. 5,496,436) (hereinafter "Bernstein"); and
- objected to claim 30 as being dependent upon a rejected base claim.

After entry of this amendment, the pending claims are: claims 28-50.

Remarks Concerning Revised Figures

Revised Figure 5A is included in Appendix A. The previously filed formal version of Figure 5A was inadvertently missing a figure. The originally filed informal version of Figure 5A shows the figure that is shown in revised Figure 5A in Appendix A. No new matter has been added to Figure 5A. The Examiner is respectfully requested to approve the proposed drawing changes.

Remarks Concerning Claims Rejections

Applicants respectfully traverse the rejection of claims 28-30 under 35 U.S.C. 102(b), because Bernstein does not teach or suggest each and every element of claim 28 as required by MPEP 2131. In addition, claim 28 has been amended for clarity.

Claim 28 requires that the stationary and moving combteeth assemblies be formed in separate wafers – i.e. a first wafer and a second wafer, respectively. Claim 28 further requires that an oxide layer is sandwiched between the two wafers. This results in the two wafers being separated from each other by the thickness of an oxide layer. As such, claim 28 requires that the moving and stationary combteeth assemblies are formed such that the moving combteeth assembly is separated by the thickness of the oxide layer from the stationary combteeth assembly. The claimed method and the resultant assembly are not taught or suggested by Bernstein. Rather, Bernstein teaches a method wherein the entire suspended assembly, including all combteeth (i.e. fingers in Bernstein), is within a single wafer (see, e.g., Figure 5 and column 7, lines 4-27). The bottom wafer in Bernstein merely holds sense or torque electrodes, which are not combteeth and are not part of any combteeth

assembly. Thus, Bernstein does not teach forming combteeth in two wafers separated by an oxide layer.

Furthermore, Bernstein does not teach deep trench etching or removing exposed portions of the oxide layer to release the moving combdrive assembly as claimed in claim 28. The removing step of claim 28 includes removing portions of the oxide layer in order to release the moving combteeth assembly in the second wafer after the two wafers are bonded and after the moving combteeth assembly is formed. In contrast, Bernstein discloses etching an oxide layer on the lower wafer before bonding the second wafer to the first wafer. Bernstein does not teach the claimed removing step, because its method leaves an area of the lower wafer exposed through a window in its oxide layer before the top wafer is bonded to the lower wafer. Thus, Bernstein has no need for, and thus no reason to teach or suggest, a subsequent removing step to release any of its parts. Bernstein's method is different and distinct from that claimed in claim 28, and as such, Bernstein does not anticipate claim 28.

As claim 29 and new claims 31-40 depend from claim 28, these claims should be allowed for at least the reasons that claim 28 is allowable as described above. New claims 31-40 are supported at least by Figures 4 and 5A-F and the specification at page 5, line 23 through page 7, line 27. New claims 31-40 include no new matter. Applicants respectfully submit that new claims 31-40 are not taught or suggested by the cited prior art.

Remarks Concerning Claims Objection

Claim 30 has been rewritten in independent form to include the elements of claim 28 from which it originally depended. Thus, claim 30 should be allowed as the Examiner has indicated that claim 30 would be allowed if rewritten in independent form. Claims 41-50 depend from claim 30, and as such, these claims should be allowed for at least the same reasons as claim 30.



USSN 10/076,296

In light of the above amendments and remarks, the Applicant respectfully requests that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney at (650) 849-7721, if a telephone call could help resolve any remaining items.

Date: September 19, 2003

Respectfully submitted.

Gary S. Williams

31,066

(Reg. No.)

PENNIE & EDMONDS LLP

3300 Hillview Avenue

Palo Alto, California 94304

(650) 493-4935